

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES BOIVIN, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 03-2373 (JR)
	:	
US AIRWAYS, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	

MEMORANDUM

Pending before the Court are plaintiffs' motion for partial summary judgment [28], PBGC's motion to dismiss [29], and PBGC's cross-motion for summary judgment [30].

The background of the dispute in this case is set forth in Boivin v. US Airways, Inc., 297 F. Supp.2d 110 (D.D.C. 2003) (Boivin I), and will not be repeated here. Since the issuance of Boivin I, PBGC has revised the estimated guaranteed benefits of pilots over 65 years old and begun paying against the new estimates. On September 29, 2004, US Airways filed an amended notice of bankruptcy and automatic stay [46]. In its cross-motion for summary judgment, PBGC stated that it would complete its review of all US Airways estimated benefit calculations "around August 2004," Memorandum at 7, and "make a back payment, with interest, to any retiree who has received less (on a net basis) than the total amount to which the participant was

entitled." Id. at 8. The record before me does not reflect whether that undertaking has in fact been fulfilled.

The principal issue raised by PBGC's cross-motion for summary judgment, and the principal issue that was before this Court when the preliminary injunction motion was heard and decided in Boivin I, is "whether PBGC has a fiduciary duty to correct mistakes made by US Airways in calculating estimated benefits before it has fully processed the terminated plan and made formal benefit determinations." Boivin 1 at 116-17. The arguments made on that question at the preliminary injunction stage centered on the meaning of Piech v. Pension Benefit Guaranty Corp., 744 F.2d 156 (D.C. Cir. 1984), which was and still is the leading Circuit precedent on the question, and which found no breach of fiduciary obligation when PBGC acted as both trustee and guarantor of a plan. Plaintiffs in Piech had argued that PBGC's denial of benefits was inconsistent with its obligation as trustee to administer the plan "for the exclusive purpose of providing benefits to participants and their beneficiaries," 744 F.2d at 161, but the Court of Appeals found that what PBGC did as guarantor was done "in its capacity as the agency responsible for the administration ERISA," and that, when acting as trustee, PBGC "did nothing more than mechanically apply the PBGC's rules to the particular circumstances." Id.

Plaintiff in the present case is at considerable pains to distinguish Piech, pointing out that, here, PBGC is not “mechanically applying a published regulation” as it did in Piech, but making discretionary calls in calculating the benefits in a specific case. The distinction is one without a difference. As the Court of Appeals noted in Piech,

“Although it may in many ways be desirable for plan participants to have a trustee who is prepared to advocate their interests in opposition to the PBGC, Congress has evidently not envisioned such a role for the plan trustee.” Id.

The panel opinion points out that Congress has limited the power of any trustee, whether PBGC or some other person, to advocate the interests of the plan participants in a manner adverse to the PBGC. Id. “Congress apparently did not contemplate that plan trustees would undertake the task of testing the legal merits of participants’ claims against the PBGC as guarantor. ERISA leaves that task instead to advocates of individual participants themselves in lawsuits like this one.” Id. at 162.

At the preliminary injunction stage, relying on the double negative of the Court of Appeals’ dicta in Piech (“we do not suggest that [PBGC’s dual role] can never give rise to a conflict of interest leading to a breach of the fiduciary obligations of a plan trustee”), I found it “more likely than not” that I would ultimately find that PBGC does have fiduciary duties to plan participants with respect to their benefit

calculations, Boivin I at 117. Now that plaintiffs' claim has been challenged by a motion for summary judgment, however, plaintiffs having failed to adduce evidence of bad faith, see Boivin I at 117-18, or to make any showing of "what a fiduciary must do when presented with evidence that it has inherited flawed interim benefit calculations," id. at 118, no genuine issue of material fact appears of record on the question of PBGC's fiduciary obligations, and PBGC is entitled to summary judgment on the two counts that raised the claim, Counts 2 and 4.

Count 1 presents a straight challenge to PBGC's alleged failure to pay all guaranteed non-forfeitable benefits as required by ERISA § 4022(a), 29 U.S.C. § 1322(a). The substance of this claim is that "PBGC currently pays participants amounts that do not approach the maximum guaranteed benefit for the participant's respective ages." Complaint, ¶ 83. As PBGC points out, however, Motion to Dismiss at 26-27, plaintiff has not exhausted its administrative remedies, and indeed no final agency action appears of record. PBGC is required to pay estimated benefit payments, 29 U.S.C. § 1302(a)(2), and then to go through what PBGC calls the "multi-faceted iterative process" that culminates in the issuance of formal benefit determinations. Id. at 26. Once those determinations are issued, the participants have appeal rights, 29 C.F.R. §§ 4003.51-4003.61, and the Appeal Board's decision is the final agency action, 29 C.F.R. § 4003.59,

which is then subject to judicial review. Count 1 must be dismissed for failure to state a claim upon which relief may be granted.

Plaintiffs' final claim, Count 5, is that PBGC failed to explain the method by which benefits were calculated and that its failure was a violation of ERISA §§ 104(b)(2), and (b)(4), and 404(a)(1), 29 U.S.C. §§ 1024(b)(2), (b)(4), and 1104(a)(1). In its motion to dismiss, PBGC asserts that when it acts as statutory trustee of a terminated pension plan, as it is acting here, it is not a plan "administrator" or "plan sponsor," and the reporting and disclosure requirements of ERISA Title I are inapplicable. Plaintiffs practically concede the point, citing only to general case law about a fiduciary's duty to disclose material information. The claim in this case is based on a statutory duty, and not the generic duties of fiduciaries. Count 5 will be dismissed for failure to state a claim upon which relief can be granted.

An appropriate order accompanies this memorandum.

JAMES ROBERTSON
United States District Judge